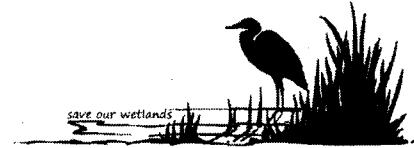


# Law Office of Jack Silver

708 Gravenstein Hwy. North, # 407, Sebastopol, CA 95472-2808  
Phone 707-528-8175 Email: JSilverEnvironmental@gmail.com



***Via Certified Mail –  
Return Receipt Requested***

August 7, 2020

Rudy Emami, Public Works Director  
Dept. of Public Works  
City of Anaheim  
200 S. Anaheim Blvd., Suite 176  
Anaheim, CA 92805-3820

Greg Garcia, Interim City Manager  
Members of City Council  
City of Anaheim  
200 S. Anaheim Blvd, Suite 733  
Anaheim, CA 92805-3820

Head of Agency  
Public Works Operations Division  
City of Anaheim  
400 E. Vermont Avenue  
Anaheim, CA 92805-5601

**Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)**

Dear Mr. Emami, Mr. Garcia, Members of City Council and Head of Agency:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of the City of Anaheim's sewage collection system.

River Watch hereby places the City of Anaheim ("City"), as owner and operator of its sewage collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Santa Ana Region ("RWQCB"), Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges from the City's sewer pipelines to Coyote Creek, Carbon Creek Channel, Anaheim Barber City Channel, the Santa Ana River, and the Pacific Ocean, all waters of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without a National Pollutant Discharge Elimination System (“NPDES”) Permit or otherwise complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that enforcement can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

## **NOTICE REQUIREMENTS**

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

### **1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated**

River Watch has identified discharges of sewage from the City’s sewage collection system to waters of the United States, without an NPDES permit, in violation of CWA § 301(a), 33 U.S.C. §§ 1311(a), which states in part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.”

### **2. The Activity Alleged to Constitute a Violation**

River Watch contends the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

#### **A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts**

##### **i. Collection System Surface Discharges Caused by Sanitary Sewer Overflows**

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above-ground from the sewage collection system, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO

Reports and on the dates when no reports were filed by the City, all in violation of the CWA. The City's aging sewage collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in the discharge of raw sewage into gutters, canals and storm connected to adjacent surface waters including Coyote Creek, Carbon Creek Channel, Anaheim Barber City Channel, the Santa Ana River, and the Pacific – all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **61**, with **66,680** "Total Vol. of SSOs (gal)" discharged into the environment. Of this total volume, the City admits at least **29,732** gallons, or **44%** of the total, reached a surface water. The discharge poses both a nuisance pursuant to California Water Code § 13050(m) as well as an imminent and substantial endangerment to public health and the environment.

Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

- March 9, 2016 (Event ID# 822827) - a spill of 12,500 gallons caused by debris-rags occurred at 1400 E. Blossom Lane, Anaheim. Of this total volume, 12,000 gallons were reported as discharging into Carbon Creek Channel.
- September 29 2017 (Event ID# 840403) - a spill of an estimated 3,600 gallons caused by grease obstruction occurred at 1717 S. Disneyland Drive, Anaheim. Of this total volume, 1,600 gallons were reported as discharging into Anaheim Barber City Channel.
- October 14, 2018 (Event ID# 851730) - a spill of an estimated 1,000 gallons caused by grease deposition (FOG) occurred at 1475 S. Anaheim Boulevard, Anaheim. The entire 1,000 gallons were reported as discharging into Huntington Harbor.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

ii. Inadequate Reporting of Discharges

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the City as not reaching a surface water did in fact reach surface waters, and those reported as reaching a surface water did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the City received notification of an SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations.

Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

- October 25, 2017 (Event ID#841094) - the spill start time and agency notification time are both reported as 11:56 am, operator arrival time as 12:30 pm, and spill end time as 12:45 am. The estimated total volume of the spill is reported as 30 gallons, 20 gallons of which reached the Santa Ana River.
- September 3, 2017 (Event ID# 839565) - the spill start time is reported as 12:30 pm, agency notification time as 1:00 pm, operator arrival time at 1:45 pm, and spill end time at 2:00 pm. The spill, caused by grease deposition (FOG) allowed an estimated 450 gallons to discharge into Carbon Creek Flood Control Channel.
- March 9, 2016 (Event ID# 822827) - the spill start time is reported as 8:00 pm, agency notification time at 8:20 pm, operator arrival time at 9:00 pm, and estimated spill end time at 9:15 pm. The spill, caused by debris-rags, discharged 12,000 gallons into Carbon Creek Flood Control Channel.

Given the unlikely accuracy of the times, intervals and spill volumes provided in these reports, it is difficult to consider the stated volumes as accurate. Without accurately reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

iii. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of its SSOs. The City is subject to the requirements of the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements*, Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the City to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the City is underestimating SSOs which reach surface waters, River Watch contends the City is not conducting sampling at all.

The EPA's "*Report to Congress on the Impacts and Control of CSOs SSO*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. River Watch finds no record of the City performing any analysis of the impact of its SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies designated as habitat from the impacts of SSOs.

**B. Failure to Warn**

River Watch contends the City is understating the significance of the impacts of its CWA violations by failing to post health warning signs for many of the discharges reported as having reached a surface water. Health warning signs were only posted for 2 SSOs (Event ID#s 851730 and 840403) out of the last 13 SSOs (Event ID#s 865321, 862429, 860521, 851730, 841094, 840403, 840015, 839656, 818144, 817278, 829911, 824418, and 822827) reported as reaching a surface water.

**C. Collection System Subsurface Discharges**

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewage collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the City's sewage collection system into groundwater hydrologically connected to surface waters including, but not limited to, Coyote Creek, Carbon Creek Channel, Anaheim Barber City Channel, the Santa Ana River, and the Pacific Ocean. Surface waters then become contaminated with pollutants including human pathogens. Chronic failures in the sewage collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other collection systems have verified the contamination of the adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, II data, and video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City's sewage collection system which reached a surface water is a discharge of a pollutant to a surface water without an NPDES permit, and therefore a violation of the CWA.

#### **D. Impacts to Beneficial Uses**

Coyote Creek, Carbon Creek Channel, Anaheim Barber City Channel, the Santa Ana River, and the Pacific Ocean all have multiple beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Coyote Creek is a principal tributary of the San Gabriel River in northwestern Orange County, southeast Los Angeles County, and southwest Riverside County. The Creek is 13.7 miles long and drains a land area of 41.3 square miles. Carbon Creek is Coyote Creek's longest tributary, flowing some 13.6 miles and joining Coyote Creek about 10 miles south of Brea and Tonner Canyon near its mouth at the San Gabriel River. The San Gabriel River empties into the Pacific Ocean between Alamitos Bay and Anaheim Bay.

Anaheim Barber City Channel is 8.65 miles long flowing through Stanton, Garden Grove, Westminster, and Seal Beach before emptying into the north end of Anaheim Bay Marsh. Anaheim Bay is listed as impaired under CWA §303(d) for dieldrin, nickel, PCBs, and sediment toxicity. Seal Beach National Wildlife Refuge, a 965-acre refuge in Seal Beach, encompasses remnant saltwater march in the Anaheim Bay estuary. Seal Beach is listed as impaired under CWA §303(d) for enterococcus and PCs. The Refuge is a critical stopover on the Pacific Flyway and home to the endangered Light-footed clapper rail, California Least tern, and Eastern Pacific Green sea turtle.

The Santa Ana River is 96 miles long and covers 2,650 square miles in parts of San Bernadino, Riverside, Orange and Los Angeles Counties. Its headwaters begin at Heart Bear Creek and Coon Creek in the San Bernadino Mountains. The River flows from there towards the Pacific Ocean emptying into a tidal lagoon between Huntington Beach and Newport Beach. The Santa Ana River (Reach 2) is listed under CWA §303(d) as impaired for indicator bacteria.

The Santa Ana Watershed supports 200 bird species, 50 mammal species, 13 reptiles species, 7 amphibian species and 15 fish species. The endangered steelhead trout, least Bell's vireo, southwestern willow flycatcher and Santa Ana sucker all make their home in this watershed.

### **3. The Person or Persons Responsible for the Alleged Violation**

The entity responsible for the alleged violations identified in this Notice is the City of Anaheim and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

#### **4. The Location of the Alleged Violation**

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its ownership and operation of the Facility and associated sewer collection system, as further described in this Notice.

The City operates and maintains its local sewage collection system consisting of over 500 miles of pipe lines connecting to Orange County Sanitation District's ("OCSD") trunk system to convey wastewater to OCSD's treatment Plant No. 1 in Fountain Valley and Plant No. 2 in Huntington Beach. OCSD maintains an extensive system of gravity flow sewers, pump stations, and pressurized sewers. Plant No. 1 currently provides all of its secondary treated wastewater to Groundwater Replenishment System (GWRS) for beneficial reuse. The plants share a 120-inch diameter ocean outfall extending 4 miles off the coast of Huntington Beach. A 78-inch emergency outfall also extends 1.3 miles off coast.

#### **5. Reasonable Range of Dates During Which the Alleged Activity Occurred**

The range of dates covered by this Notice is August 3, 2020 to the present. This Notice also includes all violations of the CWA by the City which occur after the range of dates covered by this Notice up to and including the end of trial. Some violations are continuous, and therefore each day constitutes a violation.

#### **6. The Full Name, Address, and Telephone Number of the Person Giving Notice**

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its mailing address is 290 South Main Street, # 817, Sebastopol, California, 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground water of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@nriverwatch.org](mailto:US@nriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications with respect to this Notice should be directed to the counsel identified below:

Jack Silver Esq.  
Law Office of Jack Silver  
708 Gravenstein Hwy. No. # 407  
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## RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with City's staff to tailor remedial measures to the specific operation of the sewage collection system.

## CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, fishing, horseback riding, hiking, photography or nature walks. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
Jack Silver

JS:lm



### **Service List**

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Michael Stoker, Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
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Robert R. Fabela, City Attorney  
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